Supreme Court, U.S.
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No. 98-1406

In The

Supreme Court of the United States

October Term, 1998

EDNA M. JENNINGS,

Petitioner,

vs.

SANDRA E. COUTSCOUDIS, et vir,

Respondents.

On Petition For Writ Of Certiorari To
The District Of Columbia Court Of Appeals

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MICHAEL P. CHERVENAK
Counsel of Record
FORD & CHERVENAK
255 North Washington Street
Suite 201
Rockville, Maryland 20850
(301) 279-2000
Attorney for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED FOR REVIEW

Should this Honorable Court agree to review a decision of the District of Columbia Court of Appeals which affirmed the quashing of service of process upon the respondents and the dismissal of a personal injury complaint on the basis of the District of Columbia long-arm statute, where the decision is not in conflict with other decisions of the District of Columbia Court of Appeals or decisions of the United States District Court for the District of Columbia or the United States Court of Appeals for the District of Columbia Circuit?

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STATUTES AND RULES

This case involves *District of Columbia Code* §§ 13-422 and 13-423 and Rule 4 of the District of Columbia Superior Court Rules of Civil Procedure. The pertinent text of these statutes and Rule 4 is set forth in the brief.

STATEMENT OF THE CASE

Procedural Background

Edna Jennings' civil complaint for personal injury was filed in the Superior Court of the District of Columbia on March 19, 1996. Jennings had filed an identical complaint in 1995 but that action was dismissed due to her failure to affect service of process on the defendants. In response to the 1996 action, the defendants filed a motion to quash service and motion to dismiss for lack of personal jurisdiction. On September 23, 1996, Judge Michael Rankin entered an Order granting defendants' motion to dismiss for lack of personal jurisdiction and quashing the service of the summons upon the defendants. Jennings' request that Judge Rankin reconsider his decision was rejected and the plaintiff then noted an appeal to the District of Columbia Court of Appeals. The Court of Appeals affirmed the Order of the Trial Court in a Memorandum Opinion and Judgment set forth in full in the Appendix to plaintiff's Petition.

Factual Background

Plaintiff Jennings' 1996 complaint alleges a motor vehicle accident occurring in Fredericksburg, Virginia on

August 28, 1993. Jennings, a resident of the District of Columbia, alleges that she sustained injuries and damages as the result of the negligence of Sandra Coutscoudis in the operation of a vehicle owned by her husband, Constantinos Coutscoudis. The complaint acknowledges that the Coutscoudises are residents of Virginia. Jennings' complaint asserted jurisdiction in the Superior Court pursuant to the general jurisdiction statute, § 11-921, *District of Columbia Code.*

The defendants moved to dismiss the complaint and quash the service of process based on a lack of personal jurisdiction. A supporting affidavit executed by the Coutscoudises established that they resided in Spotsylvania County, Virginia and were both retired. The affidavit further established that neither defendant worked in, nor maintained a principal place of business in, the District of Columbia. Both defendants were served with the Superior Court summons and complaint at their home in Spotsylvania, Virginia by a Deputy Sheriff of Spotsylvania County.

REASONS THE WRIT SHOULD BE DENIED

The Superior Court of the District of Columbia does not have personal jurisdiction over the defendants under the circumstances of this case. The plaintiff overlooks the fact that service of process over non-resident defendants must be authorized by statute or rule. Rule 4, Superior Court Rules of Civil Procedure, places territorial limits on the service of summons effective to establish personal jurisdiction over defendants. Those limits do not embrace

these non-resident defendants unless they could be subjected to the jurisdiction of the Superior Court of the District of Columbia.

The *District of Columbia Code* sets forth two methods by which a District of Columbia court may exercise personal jurisdiction over persons outside the District of Columbia – personal jurisdiction based upon an enduring relationship (§ 13-422) and personal jurisdiction based upon conduct (§ 13-423). The defendants are individuals who neither reside nor work in the District of Columbia and are, therefore, not subject to personal jurisdiction under § 13-422. The incident giving rise to plaintiff's civil complaint is a motor vehicle accident which occurred in Virginia. The defendants cannot, therefore, be said to have caused injury in the District of Columbia under § 13-423.

The defendants are not subject to personal jurisdiction of the Superior Court of the District of Columbia under the facts of this case and the Court cannot acquire jurisdiction over the defendants by issuing (and serving) a summons which exceeds the territorial limitation of Rule 4(k). Accordingly, the Superior Court of the District of Columbia cannot gain personal jurisdiction over these residents of Virginia by service in Virginia under the circumstances of this case and this Honorable Court should decline to grant the writ.

While the Superior Court of the District of Columbia is a court of general jurisdiction that has authority to adjudicate civil actions such as motor vehicle torts, the mere fact that the present action is a civil tort and the **plaintiff** is a resident of the District of Columbia does not

provide the Superior Court of the District of Columbia with jurisdiction over all persons. In order to entertain a viable action against a non-resident defendant, not only must the service be within limits set by the due process clause of the Constitution, but service of process over the non-resident defendant must be authorized by statute or rule. *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913 (D.D.C. 1980).

Service upon the defendants of a summons issued by the Superior Court must comply with Rule 4 of the Superior Court Rules of Civil Procedure. Subsection (k) places territorial limits on effective service:

> **Rule 4. Summons**
>
> * * * * * *
>
> **(k) Territorial Limits of Effective Service.**
>
> (1) Service of a summons or filing an acknowledgment of service is effective to establish jurisdiction over the person of a defendant
>
> **(A)** who could be subjected to the jurisdiction of this Court, or,
>
> **(B)** Who is a party joined under Rule 14 or Rule 19 and is served at a place not more than 100 miles from the place of hearing or trial, or
>
> **(C)** (Vacant)
>
> **(D)** when authorized by a statute of the United States or the District of Columbia.

The defendants are not potential parties to be joined under Rule 14 (third party practice) or 19 (joinder of persons needed for just adjudication) nor has the plaintiff alleged the existence of any other federal statute or special statute of the District of Columbia authorizing service

of summons over non-resident defendants in a simple tort case. Accordingly, sub-sections **(B)** and **(D)** are not applicable and the plaintiff cannot take refuge therein.

Subsection **(A)** of Rule 4(k) would recognize service of process in Virginia as effective **if** the defendants " . . . could be subjected to the jurisdiction of this Court . . . " Accordingly, in order to ascertain whether the defendants could be subject to the jurisdiction of the Superior Court of the District of Columbia under the circumstances of this case, it is necessary to examine the District of Columbia's long-arm statute.

Ms. Jennings' complaint is one for personal injuries arising out of a motor vehicle accident which occurred in Fredericksburg, Virginia. The defendants are residents of Spotsylvania County, Virginia and were served in Virginia. The *District of Columbia Code,* Chapter 4 – Civil Jurisdiction and Service Outside the District of Columbia – Subchapter II – Bases of Personal Jurisdiction over Persons Outside the District of Columbia – sets forth the manner in which a District of Columbia court may exercise personal jurisdiction over persons outside the District of Columbia. There are only two methods:

> **§ 13-422. Personal jurisdiction based upon enduring relationship.**
>
> A District of Columbia court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his or its principal place of business in, the District of Columbia as to any claim for relief.

and

§ 13-423. Personal jurisdiction based upon conduct.

(a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by any agent, as to a claim for relief arising from the person's –

(1) transacting any business in the District of Columbia;

(2) contracting to supply services in the District of Columbia;

(3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia;

(4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia;

(5) having an interest in, using, or possessing real property in the District of Columbia;

(6) contracting to insure or act as surety for or on any person, property, or risk, contract, obligation, or agreement located, executed, or to be performed within the District of Columbia at the time of contracting, unless the parties otherwise provide in writing; or

(7) marital or parent and child relationship in the District of Columbia if . . .

* * * * * * * * * * * *

(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

With regard to § 13-422, the defendants are **not** "domiciled in, organized under the laws of, . . . (nor do they maintain their) . . . principal place of business in, the District of Columbia . . . ". The defendants are retired and live in Spotsylvania County, Virginia. They are, therefore, not subject to personal jurisdiction under § 13-422 and are not subject to service of process outside the District of Columbia with a summons issued by a District of Columbia court.

With regard to § 14-423, the accident giving rise to the plaintiff's complaint occurred in Fredericksburg, Virginia. In fact, **no** events or omissions giving rise to plaintiff's claim occurred in the District of Columbia. Accordingly, the plaintiff's claim **cannot** be said to arise from any of the activities enumerated in that section. The defendants, therefore, are not subject to personal jurisdiction under § 13-423 and are not subject to service of process outside the District of Columbia with a summons issued by a District of Columbia court.

Inasmuch as neither *District of Columbia Code* §§ 13-422 or 13-423 are applicable to the facts of this case, and inasmuch as plaintiff has not alleged the existence of any other statute empowering a District of Columbia court with personal jurisdiction over persons outside the District of Columbia, simple service in Virginia with a Superior Court summons is ineffective as a means by

which the Superior Court may acquire jurisdiction over these non-resident defendants.

Plaintiff's recitation of the factual background and her efforts to serve the defendants in Virginia and references to an earlier-filed suit (dismissed by the Court) in support of her position are, for the most part, facts not present in the record and facts having no relevance or materiality to the issue of whether the Superior Court lacks *in personam* jurisdiction over the defendants. While the plaintiff spends much effort in establishing her contacts with the District of Columbia, **her** contacts are irrelevant in addressing the issue of whether personal jurisdiction can be exercised over the defendants by the Superior Court. Neither the fact that the plaintiff received medical care in the District of Columbia following the accident, nor the fact that her loss of earnings in the District of Columbia resulted from the accident constitute a basis for establishing long-arm jurisdiction over non-resident defendants. *Perry v. Criss Bros. Iron Works*, 741 F.Supp. 985 (D.D.C. 1990).

A significant portion of plaintiff's brief is actually an argument in opposition to a *forum non conveniens* argument, an argument not advanced by the defendants. A *forum non conveniens* discussion only arises where more than one court has both subject matter and *in personam* jurisdiction. In the instant case, it is clear that the Superior Court does not have personal jurisdiction over the defendants under the circumstances of this case, and, thus, an analysis of the relative convenience of competing forums does not arise.

Finally, the Court should be aware that this is the plaintiff's second attempt at a bite of the apple. As the decision of the District of Columbia Court of Appeals discloses, on August 26, 1996 the plaintiff filed an identical complaint for damages against these defendants for the same cause of action in the United States District Court for the District of Columbia. The defendants challenged the personal jurisdiction of that Court over them and Judge Charles Richey entered a Memorandum Opinion and Order granting the defendants' motion to dismiss for lack of personal jurisdiction, quashing the potential service of the summons upon the defendants and denying plaintiff's request for removal of the case to the United States District Court for the Eastern District of Virginia. *Jennings v. Coutscoudis*, 941 F. Supp. 5 (D.D.C. 1996).

Judge Richey examined FRCP 4 and the District of Columbia long-arm statute and concluded:

> The defendants could not be subjected to the jurisdiction of a court of general jurisdiction in the District of Columbia because they have no enduring relationship with the District nor did their allegedly tortious conduct have a nexus with the District.

Judge Richey also observed that if the court of general jurisdiction does not have personal jurisdiction over the defendants, service of summons cannot confer such jurisdiction.

Jennings noted an appeal to the United States Court of Appeals for the District of Columbia Circuit from Judge Richey's orders and that Court issued a *per curiam*

decision affirming Judge Richey's decision. *Jennings v. Coutscoudis* 1997 WL 411792 (D. C. Cir.).

CONCLUSION

There being no basis for personal jurisdiction over non-resident defendants by a District of Columbia court for a personal injury claim arising from a motor vehicle accident occurring in Spotsylvania County, Virginia under the circumstances of this case, and there being no statute or rule authorizing extra-territorial service of summons, the defendants submit that the summons issued by the Superior Court and served upon the defendants in Virginia should have been quashed as that service cannot exceed the territorial limitations of Rule 4(k). Respondents pray that this Court decline to grant the writ presented as the Superior Court of the District of Columbia does not have personal jurisdiction over the respondents under the circumstances of this case and the issue needs no further review.

Respectfully submitted,

FORD & CHERVENAK
MICHAEL P. CHERVENAK
255 North Washington Street
Suite 201
Rockville, Maryland 20850
(301) 279-2000

Attorney for Respondents